



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Inventor: Dan Scott Johnson

Serial No. 10/808,012

Filed: March 24, 2004

For: AUDIO/VIDEO COMPONENT NETWORKING SYSTEM AND METHOD

Examiner: Mushfikh I. Alam

Group Art Unit: 2426

Docket No. 200207103-1

Date: March 22, 2010

REPLY BRIEF UNDER 37 CFR 41.41(a)(1)

Mail Stop Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the current Reply Brief, Appellant responds to Section 10 of the Examiner's Answer, filed January 21, 2010, which is entitled "Response to Argument" and which begins at the bottom of page 9 of the Examiner's Answer.

In the final paragraph of page 10 and continuing on to page 11, the Examiner states:

Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). Independent claims 1 and 10 merely cite generalized features of an A/V source component comprising a processor and a data manager that monitors a user requested A/V program and automatically retrieves related A/V program from an archive. "...presentation of A/V program data requested by a user via a presentation device" in a broad sense can be represented by "a usage log" ...where content is the usage data that represents A/V program data and the "presentation" is the log ...and the "via a presentation device" is the way such usage log was generated.

The Examiner appears to attempt to disparage independent claims 1 and 10 by stating: "Independent claims 1 and 10 *merely* cite generalized features of an A/V source component" (emphasis added). Contrary to the Examiner's assertion, independent claims 1 and 10 are explicitly directed to an audio/visual source component, and contain explicit claim language that clearly claims an embodiment of the A/V source component disclosed in the current application that is neither taught nor disclosed by the cited reference.

Appellant has provided a detailed discussion of independent claims 1 and 10, in the previously filed appear brief, which the Examiner has apparently either failed to read and understand or has chosen to disregard. As discussed on pages 8-11 of the previously filed appeal brief, independent claims 1 and 10 are directed to an audio/video ("A/V") source component that includes a data manager "adapted to monitor presentation of A/V program data requested by a user via a presentation device." As discussed in the previously filed appeal brief, as explicitly stated in the current application, and as is well-known to anyone familiar with modern technology and the English language, a presentation device is a device, such as a speaker, television, computer system, stereo system, or other such electronic device that performs, plays, or otherwise presents an A/V program to a user. The root word of the word "presentation" is "present," the meanings of which are associated with giving, displaying, or offering something perceptible to a human to or human audience. Paragraph [0019] of the current application is quoted on pages 9-10 of the previously filed appeal brief, in which the phrase "presentation device" is clearly explained. Claim 1 explicitly states that A/V program data is automatically retrieved "in response to *presentation of the monitored A/V program data to the user*" (emphasis added). Independent claim 10 explicitly claims a "means for monitoring *presentation of requested A/V program data to a user via a presentation device*" (emphasis added).

A usage log is electronically-encoded data stored in memory and/or a mass-storage device within a computer system. Those with even cursory familiarity with electronic computing and modern technology well understand that electronically-encoded and electronically-stored log files in a remote server computer system in no way constitute presentation of anything, let alone presentation of A/V program data, to a user. A "usage log" does not represent, in a broad sense or any other kind of sense, "presentation of A/V program data requested by a user via a presentation device," contrary to the Examiner's assertion. There is no indication in Farrand that the "user log" is even transmitted to a user's computer, let alone presented to a user.

Contrary to the Examiner's assertion, there is nothing in Appellant's arguments, presented in the previously filed appeal brief, that requests or invites reading limitations from the specification into the claims. An examiner is not permitted to substitute the examiner's arbitrary definitions for claims terms and phrases for the definitions of the claim terms and phrases provided in a patent-application specification, provided by applicants during prosecution, or, lacking definition in the specification or in the prosecution history, for the meanings that the claims terms have to those ordinarily skilled in the art. It is certainly the case that examiners broadly interpret claims during examination, but the broad interpretations must be reasonable, as stated in many Federal Circuit decisions and in M.P.E.P. §2111.01, quoted in the previously filed appeal brief. An interpretation that would contradict well-understood English-language words, such as the word "presentation," contradict the clearly defined meaning of a term or phrase such as "presentation device," definitions for which are provided in the current specification and in the prosecution history, and that would read claim language such as "in response to presentation of the monitored A/V program data to the user" onto electronically-encoded data stored in a remote server computer that is apparently never downloaded to a user's computer, let alone displayed or presented to a user, is not reasonable. An examiner is never permitted to arbitrarily define claim terms and phrases. Arbitrary definition of claim terms by the Examiner, in the above-quoted statement from the Examiner's Answer, is a clear and serious error.

On page 11 of the Examiner's Answer, the Examiner states:

Applicant is reminded that "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure." *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) Hence the "data manager" can be the Network Ops Center (NOC) (server which would have a processor; [0070]). Evaluation of the "usage log" relates to AV programs that would have been observed through a presentation device, previously requested by the user. Retrieving A/V program data is related to "...NOC 180 may automatically provide baseball-related content to the user such as, for example, broadcast schedules for upcoming games, a subscription offer to a sports magazine, advertisements, and various other baseball-related content." It therefore follows that Farrand reads on the broad limitations of the applicant's invention.

Appellant's representative has no idea to what the Examiner is referring in this paragraph. It would seem that the Examiner feels that an examiner is entitled to as broadly define a claim as needed to read the claim onto an unrelated passage of a cited reference. That is clearly not the case. An examiner is entitled to interpret the claim as broadly as would be reasonable, in

light of the specification, prosecution history, knowledge of those skilled in the art, and, in certain cases, with regard to definitions of claim terms and phrase in dictionaries and other such sources of definitions, but is never allowed to arbitrarily interpret claim language and/or interpret claims based on arbitrary definitions, particularly arbitrary definitions that contradict the well-understood meaning of terms and phrases in the English language, definitions in the specification, definitions provided in the prosecution history, and other legitimate source for definitions of claim terms and phrases. In the above-quoted passage, the Examiner states: "Evaluation of the 'usage log' relates to AV programs that would have been observed through a presentation device, previously requested by the user." As has been repeatedly pointed out to the Examiner, this is simply an assumption on the Examiner's part. There is no way taught or suggested in Farrand for Farrand's NOC server to determine whether or not a user has played a downloaded program, from Appellant's representative's reading of Farrand. Farrand's disclosure provides no indication that, in fact, there is any communication transmitted from the user's A/V system back to the NOC server to indicate whether or not a downloaded A/V data has, in fact, been presented to a user. Rather than consider the detailed arguments provided by Appellant in previously filed responses and in the previously filed appeal brief, the Examiner appears to simply insist that the Examiner's arbitrary and unsupported definitions of the claim phrase "presentation device" and the word "present" should control interpretation of the claims, rather than the legitimate sources of meanings for the claim terms and phrases that include definitions included in the specification, definitions made by Appellant during prosecution, understanding of claim terms and phrases by those ordinarily skilled in the art, and, in certain cases, external sources for definitions including dictionaries and textbooks. In Appellant's representative's respectfully offered opinion, this represents clear error on the part of the Examiner. Furthermore, the rejections of claims 1 and 10 are made under 35 U.S.C. § 102(e), and, for anticipation rejections, the Examiner must find a teaching or disclosure of all claim limitations. A 35 U.S.C. § 102(e) rejection is not supported by statements such as: "Evaluation of the 'usage log' relates to AV programs that would have been observed through a presentation device, previously requested by the user." The relationship "relates to" is not equivalent to "teach" or "disclose."

On page 12 of the Examiner's Answer, the Examiner states:

The above response applies. Applicant is reminded that "to determine when A/V program data is actually presented to a user." Is not a limitation of claims 1 or 10. Claim 1 and 10 merely limit to "automatically retrieve A/V program data related to the monitored A/V program data" which has been

addressed above.

It would seem that the Examiner has failed to read and understand independent claims 1 and 10. Claim 1 explicitly states that the data manager automatically retrieves A/V program data related to the monitored A/V program data from an archival storage system "in response to presentation of the monitored A/V program data to the user." Independent claim 10 explicitly claims a "means for monitoring presentation of requested A/V program data to a user via a presentation device." Independent claims 1 and 10 are directed to a system in which the data manager takes well-defined actions in response to presentation of A/V program data to a user. Again, the Examiner appears to use the word "merely" in an attempt to disparage the contents and scope of claims 1 and 10, but has apparently failed to read and fully understand these claims. Neither claim is merely limited to "automatically retrieve A/V program data related to the monitored A/V program data." Such an interpretation would allow the Examiner to read the current claims onto the cited reference, but the interpretation is incorrect, and fails to take into consideration of the above-quoted language from the claims that clearly states that the data manager takes the claimed actions only upon presentation of the A/V program data to a user via a presentation device.

On page 12 of the Examiner's Answer, the Examiner states:

Again, limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003). To read on claim 1 and 10, Farrand's NOC merely evaluates the "usage log" which represents preferences of the users and relates to what the user watches to automatically provide related content [0079].

Again, the Examiner's use of the word "merely" would appear to be significant. In previous and in subsequent statements, the Examiner continues to suggest that the claims are anticipated simply by offering an arbitrary definition of the claim language of independent claims 1 and 10 so that the claims can be read onto the entirely unrelated concept of a "usage log." That is clearly not the case. There is nothing anywhere in the cited reference Farrand that would teach, mention, or suggest that the electronically encoded data stored in the usage log on Farrand's NOC server is ever transmitted to a user computer or other device, and no teaching, mention, or suggestion that the contents of the user log are ever displayed or otherwise made available to a user. Farrand's NOC server is a remote computer system, linked to a user's home media server via the Internet, as clearly shown in Figure 2a of Farrand and as discussed by Farrand in paragraph [0070] and in many other passages

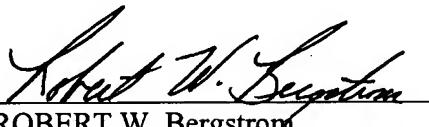
throughout Farrand's disclosure, and cannot present anything to a user. The user's presentation devices (171, 172) in Figure 2a are separated by the Internet, the user's home media server, and the user's home media network from the NOC server.

The remainder of the statements in Section 10 of the Examiner's Answer appear to restate the assertions made by the Examiner in the first four, above-quoted statements. To summarize, contrary to the Examiner's assertions, a user log is not A/V program data, is not, in Farrand's system, transmitted to, displayed to, or in any other way presented or otherwise made available to a user, and is unrelated to the subject matter of the current claims. Appellant's representative does understand that, in the cited reference Farrand, a usage log is maintained and consulted by a remote NOC server in order to make decisions with regard to downloading data to a users' home-media-server computer. Those familiar with technology, computing, and media devices would easily recognize that decisions made, based on the usage log, by the NOC server in Farrand's system are inferences. Farrand's server does not monitor actual presentation of programs to users by presentation devices, but instead monitors downloading of information to users' home-media servers, inferring that the downloads represent subsequent viewings of programs by the users. However, anyone who has downloaded files and other information from remote servers well understands that the fact that the information is downloaded does not in any way indicate or require that the information has actually been processed and displayed to a user. By contrast, in the currently claimed system, a data manager undertakes retrieval of A/V program data related to A/V program data actually processed and presented to a user through a presentation device. This is a direct monitoring of the display or presentation of program data, rather than an inference based on data download. As discussed in the previously-filed appeal brief, Farrand's system lacks a way for the NOC to monitor actual presentation of A/V data to users. Farrand's system can only infer what the user watches or hears based on data downloaded to the user's system. Retrieving additional data based on what a user actually plays, rather than inferring user preferences from download activity, is clearly a far more accurate, less error-prone method for tailoring data-retrieval to a user's preferences than making inferences from a usage log. Retrieving additional data based on what a user actually plays, rather than inferring user preferences from download activity, is also potentially more timely and more suitable for real-time anticipation of users' needs. The current claims cannot possibly be anticipated by Farrand, since Farrand does not teach or disclose monitoring of presentation of data via a presentation device to a user, and Farrand

neither teaches, nor mentions, nor even remotely suggests a way for Farrand's NOC server to determine what is actually presented to a user by the user's device or computer system.

Appellant respectfully submits that all statutory requirements are met and that the present application is allowable over all the references of record. Therefore, Appellant respectfully requests that the present application be passed to issue.

Respectfully submitted,
Dan Scott Johnson
OLYMPIC PATENT WORKS PLLC

By 
ROBERT W. Bergstrom
Reg. No. 39,906

Olympic Patent Works PLLC
P.O. Box 4277
Seattle, WA 98104
206.621.1933 telephone
206.621.5302 fax